

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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JOSE DEL-ORDEN, on behalf of himself :  
and all others similarly situated, :  
 :  
Plaintiff, : Case No. 17-cv-2744(PAE)  
 :  
-against- :  
 :  
BONOBOS, INC., :  
 :  
Defendant. :  
----- -X

**AFFIDAVIT OF DOMINIQUE ESSIG**

I, DOMINIQUE ESSIG, under penalty of perjury, declare as follows:

1. I am the Chief Experience Officer (“CXO”) for Defendant Bonobos, Inc. (“Bonobos”). I have been employed by Bonobos since November 2, 2015. I have served as the CXO for Bonobos since April 1, 2016. Prior to that time, I served as the Vice President of Product and Customer Experience for Bonobos. I submit this affidavit in support of Bonobos’ Motion to Dismiss the Amended Class Action Complaint filed by Plaintiff Jose Del-Orden (“Plaintiff”).

2. In my role as CXO, I am responsible for, among other things, overseeing technical matters related to Bonobos’ commercial website [www.bonobos.com](http://www.bonobos.com) (“Bonobos.com” or the “Website”). As such, I am familiar with the facts and circumstances of Bonobos’ ongoing efforts to improve the user experience on Bonobos.com for disabled individuals, including blind and visually-impaired individuals. Currently, Bonobos.com is compatible with commercially available screen-reading software and blind and visually-impaired users with such software can navigate through Bonobos.com and purchase Bonobos products via the Website.

3. I am also familiar with the “Web Content Accessibility Guidelines 2.0” (“WCAG 2.0” or the “Recommendations”) promulgated by the “Web Accessibility Initiative (WAI) of the World Wide Web Consortium (W3C).”<sup>1</sup> Although it has no binding effect on Bonobos, on information and belief, the technical functionalities on Bonobos.com are consistent with the recommendations regarding website “accessibility” as described in the WCAG 2.0 Recommendations.

4. Bonobos has tested Bonobos.com’s accessibility using, among other tools, the WAVE Evaluation Tool, Validity and Fangs Screen Reader Emulator<sup>2</sup>, and has determined that Bonobos.com meets the “AA” level of compliance with WCAG 2.0 Recommendations.

5. Although Plaintiff does not identify the kind of screen-reading software he is using, on information and belief, Bonobos.com can be interpreted reliably by “a wide variety of user agents, including assistive technologies,” as is recommended by WCAG 2.0’s principle of “Robustness.” (See WCAG 2.0 Recommendations.) Screen-reading software is designed and distributed or sold by third-party software developers. The software is designed to interact with other computer programs or websites to provide auditory descriptions of the content on the user’s computer screen. For websites, a screen-reader reads aloud the text elements on the web pages as

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<sup>1</sup> All references to the WCAG 2.0 Recommendations herein are not to be deemed an admission that these “guidelines” have any force of law or other binding effect on Bonobos or Bonobos.com, nor should they otherwise be deemed to establish any legal standard of “accessibility” for websites.

<sup>2</sup> WAVE Evaluation Tool and Validity are available in the Google Chrome Web Store (<https://chrome.google.com/webstore/category/apps?feature=chromeapp>) (last accessed August 9, 2017) and the Fangs Screener Emulator is available in the Mozilla FireFox Add-ons page (<https://addons.mozilla.org/en-US/firefox/addon/fangs-screen-reader-emulator/>) (last accessed August 9, 2017).

well as “alt-text” elements, which are descriptions of images and other visual elements on a page that are coded into the page and are generally not visible when viewing a web page through the standard settings on a web browser (e.g., Google Chrome or Mozilla FireFox) but are recognized by the screen-reading software. Most screen-reading software also assists a user in navigating a program or website using keyboard shortcuts that allow users to jump to different elements on the screen.

6. All images on Bonobos.com are coded with “alt-text” or other labelling codes that are designed to interact with most commercially-available screen-reading software to inform blind and visually-impaired users of the content of the image. Bonobos.com’s use of “alt-text” for images is consistent with the WCAG 2.0 Recommendation’s Perceivability Principle and its recommendation that “non-text content” have a “text alternative,” although these recommendations are not binding upon Bonobos or Bonobos.com.

7. All forms on Bonobos.com are coded with “alt-text” and other labelling codes that are designed to interact with most commercially-available screen-reading software to assist blind and visually-impaired users in navigating the website. The “drop-down menus” and buttons on the individual product pages on Bonobos.com contain code that is recognizable to most commercially-available screen-reading software.

8. These functions are consistent with WCAG 2.0’s “Perceivability” Principle and its recommendation that “non-text content” have a “text alternative,” although these recommendations are not binding upon Bonobos or Bonobos.com. See WCAG 2.0 Recommendations.

9. A user with a screen-reader can navigate the website using the keys on a

computer keyboard – including the tab, spacebar and arrow keys – to cycle through the individual product pages to select the buttons corresponding to the “color,” “size,” “fit” and other options of the product that they wish to purchase. Upon completion of the selection options, a user can use the keyboard to select the “Add to Cart” button, which places the item in the user’s “shopping cart,” from which the user can complete his or her purchase. This functionality is consistent with WCAG 2.0’s “Operability” Principle, which specifically recommends that functions be available from a keyboard. See WCAG 2.0 Recommendations.

10. On June 30, 2017, I submitted an Affidavit in Support of Bonobos’ Motion to Dismiss the original Class Action Complaint in this action. A copy of my original affidavit is annexed hereto as Exhibit A. In my original Affidavit, I identified the various functions on Bonobos.com that addressed the allegations of “inaccessibility” Plaintiff made in his original Class Action Complaint.

11. I understand that subsequent to Bonobos serving Plaintiff with its original Motion to Dismiss, Plaintiff filed an Amended Class Action Complaint (“Amended Complaint” or “Am. Compl.”) in which he acknowledges that Bonobos.com has “certain accessible features such as alternative text and navigation links,” but continues to allege that Bonobos.com is “still not reasonably accessible and constant modification is needed to maintain the accessibility of Bonobos.com because new products are constantly being updated or introduced” and that “Blind customers are still unable to select the desired fit and type of clothes and are still prevented from making purchases on Bonobos.com.” (See Am. Compl. at ¶ 43.)

12. In his Amended Complaint, Plaintiff specifically alleges that Bonobos.com “lacks accessible forms including forms that allow blind customers to specify the size, fit and color

of certain items.” (See Am. Compl. at ¶ 45.) This allegation was not accurate at the time Plaintiff filed his Complaint, nor is it currently correct.

13. Plaintiff’s Amended Complaint includes a screenshot of product page that Plaintiff claims exemplifies the alleged “lack of accessibility” of “forms” on Bonobos.com. (See Am. Compl. at ¶ 44.) On information and belief, the product page identified is for Bonobos’ “Daily Grind Limited Edition” dress shirt. (See <https://bonobos.com/products/daily-grind-limited-edition?color=navy%20diamond>.) Bonobos has reviewed the coding on the product page and has also simulated the experience of purchasing a “Daily Grind Limited Edition” dress shirt by a visually-impaired user using Apple’s VoiceOver software (a screen-reading program that comes standard with Apple’s operating systems) to navigate the product page. A video of Bonobos’ simulation is annexed hereto as Exhibit B.<sup>3</sup> During the simulation, the user was able to select the color, fit and size (including collar size) of the shirt and put the item in the shopping cart for purchase using only the screen-reading software and the computer keyboard. The simulation reflects the functionality of the web page prior to Plaintiff filing the Amended Complaint. Bonobos.com represents that this simulation is consistent with the user experience on all product pages on Bonobos.com. Based on this review, Bonobos believes that blind and visually-impaired users with most commercially-available screen-reading software can complete a purchase of the product using only software and the keys on his or her computer keyboard.

14. Bonobos believes it is important to provide access to its products to blind

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<sup>3</sup> Exhibit “B” to this Affidavit is contained on a CD served herewith. Bonobos has also made a copy of the video available for online review here: [https://drive.google.com/file/d/0B\\_1nW7OV-wPZd3NPYjUzRGJmZjA/view](https://drive.google.com/file/d/0B_1nW7OV-wPZd3NPYjUzRGJmZjA/view) (last accessed August 9, 2017).

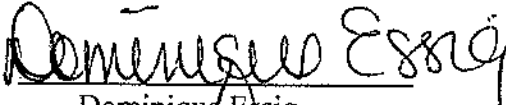
and visually-impaired customers, as well as other disabled customers, which is why it has voluntarily undertaken efforts to ensure Bonobos.com is accessible to blind and visually-impaired users with commercially-available screen-reading software. The coding on Bonobos.com that is intended to facilitate use of the website by a user with a screen-reader exists at a structural level on the website and automatically applies to any new or updated pages going forward. Additionally, Bonobos has no incentive or intention to remove these features, as they allow more customers to browse and purchase Bonobos products.

15. Plaintiff also alleges that he was “unable to find the location of a physical store location on Defendant’s website, preventing him from going into the physical store to complete a purchase with the help of Bonobos’ employees.” (Am. Compl. at ¶¶ 49.) It is unclear what Plaintiff refers to by the term “physical store,” as Bonobos does not sell any of its products at a physical location. However, assuming Plaintiff is referring to Bonobos’ Guideshops – at which a Bonobos Guide can walk a customer through Bonobos’ entire collection and place an order for products on Bonobos.com on the customer’s behalf online – the location of each Guideshop is set forth in plain text on Bonobos.com, along with each Guideshop’s telephone number and operating hours, all of which is recognizable by most commercially available screen-reading software.

16. Bonobos also offers a toll-free national phone number, also listed in plain text on Bonobos.com, through which customers can ask questions to Bonobos’ customer service employees, known as “Ninjas,” including questions about navigating the website, finding a Guideshop and ordering products.

17. In sum, the goods and services of Bonobos are fully accessible to visually-impaired and blind customers and Bonobos.com already implements many of the recommendations contained in the WCAG 2.0 Recommendations, though these “guidelines” have no force of law.

**Pursuant to 28 U.S.C. Section 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on August 7, 2017.**

  
Dominique Essig

# EXHIBIT A



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

----- -X  
JOSE DEL-ORDEN, on behalf of himself :  
and all others similarly situated, :  
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Plaintiff, : Case No. 17-cv-2744(PAE)  
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BONOBOS, INC., :  
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I, DOMINIQUE ESSIG, under penalty of perjury, declare as follows:

1. I am the Chief Experience Officer (“CXO”) for Defendant Bonobos, Inc. (“Bonobos”). I have been employed by Bonobos since November 4, 2015. I have served as the CXO for Bonobos since April 1, 2016. Prior to that time, I served as the Vice President of Product and Customer Experience for Bonobos. I submit this affidavit in support of Bonobos’ Motion to Dismiss the Class Action Complaint filed by Plaintiff Jose Del-Orden (“Plaintiff”).

2. In my role as CXO, I am responsible for, among other things, overseeing technical matters related to Bonobos’ commercial website [www.bonobos.com](http://www.bonobos.com) (“Bonobos.com”). As such, I am familiar with the facts and circumstances of Bonobos’ ongoing efforts to improve the user experience on Bonobos.com for disabled individuals, including blind and visually-impaired individuals. Currently, Bonobos.com is compatible with commercially available screen-reading software and blind and visually-impaired users with such software can purchase Bonobos products through Bonobos.com.

3. I am also familiar with the “Web Content Accessibility Guidelines 2.0” (“WCAG 2.0” or the “Recommendations”) promulgated by the “Web Accessibility Initiative (WAI) of the World Wide Web Consortium (W3C).”<sup>1</sup> Although it has no binding effect on Bonobos, on information and belief, the technical functionalities on Bonobos.com are consistent with the recommendations regarding website “accessibility” as described in the WCAG 2.0 Recommendations.

4. I understand that Plaintiff filed a Complaint in this action on April 17, 2017 (the “Complaint”), in which he alleges that Bonobos.com contains certain “access barriers,” which he has identified as an alleged “lack of alt-text on graphics, inaccessible forms, the lack of adequate prompting and labeling, lack of navigation links[,] the denial of keyboard access[,] and the requirement that transactions be performed solely with a mouse.”

5. In the Complaint, Plaintiff alleges that “there are many important pictures on Bonobos.com that lack [a] text equivalent.” (See Complaint at ¶ 41.) This allegation is not correct. All images on Bonobos.com are associated with either alternative text (“alt-text”) or “Aria labels” that can be recognized by most commercially-available screen-reading software. Screen-reading software is created by third-party producers, not Bonobos. Screen-reading software interacts with other computer programs or websites to “read” aloud the contents of the other program or website to a user. The “alt-text” on Bonobos.com can be “read” by most commercially-available screen-reading software. That software, in turn, reads the website’s text or provides the

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<sup>1</sup> All references to the WCAG 2.0 Recommendations herein are not to be deemed an admission that these “guidelines” have any force of law or other binding effect on Bonobos or Bonobos.com, nor should they otherwise be deemed to establish any legal standard of “accessibility” for websites.

user with an audio description of the image displayed based on the “alt-text.”

6. I note that Bonobos.com’s use of “alt-text” for images is consistent with the WCAG 2.0 Recommendation’s Perceivability Principle and its recommendation that “non-text content” have a “text alternative,” although these recommendations are not binding upon Bonobos or Bonobos.com.

7. Plaintiff also claims that “Bonobos.com lacks accessible image maps.” (See Complaint at ¶ 42.) This allegation is erroneous. Bonobos.com does not use “image maps,” defined by WCAG 2.0 Recommendations as “an image divided into selectable regions defined by <area> elements (“hotspots”) that allow user interaction.” (See WCAG 2.0 Recommendation.)

8. Plaintiff next claims that “[t]he shopping cart on Bonobos.com does not contain adequate alt-text” and that the “shopping cart simply reads the number of items in the cart instead of notifying blind users that the image is a cart.” (See Complaint at ¶ 42.) At the time the Complaint was filed, “alt-text” on Bonobos.com identified the “shopping cart” button as a “briefcase,” consistent with the shape of the image associated with the function. The “shopping cart” button has since been modified to identify the image as a “cart” when the image is read by screen-reading software. Additionally, the “shopping cart” page itself contains text and “alt-text” that is recognizable by most commercially-available screen-reading software and provides the user with a description of the specific items contained within the “shopping cart.”

9. Plaintiff also claims that the “add to cart button” does not have “text-alt [*sic*] to allow blind customers to continue with their transaction.” (See id. at ¶ 42.) This is inaccurate. The second button contained within the “shopping cart” page allows users to close the “shopping cart” and continue shopping on Bonobos.com. The button can be toggled using keys on a keyboard

and the button contains the text “close,” which can be recognized by most commercially-available screen-reading software.

10. Plaintiff further alleges that Bonobos.com “lacks accessible forms including forms that allow customers to locate and choose products as well as specify the size, fit and color of certain items” and that “blind customers are unable to specify the type of product desired because the drop boxes on Bonobos.com do not indicate its [*sic*] purpose.” (*Id.* at ¶ 43.) This allegation is also inaccurate. All of the drop-down menus on Bonobos.com contain text that is recognizable to most commercially-available screen-reading software. A user can also use the keys on their keyboards – including the tab, spacebar and arrow keys – to cycle through menus for products and select “color,” “size,” “fit” and other options, all of which contain text that is recognizable to most commercially-available screen-reading software. Upon completion of the selection options, a user can use the keyboard to select the “Add to Cart” button, which places the item in the user’s “shopping cart,” from which the user can complete his or her purchase.

11. Plaintiff further claims that the “lack of navigation links on [Bonobos.com] makes attempting to navigate through Bonobos.com even more time consuming and confusing.” (*Id.* at ¶ 44.) Plaintiff also alleges that he “must tab through every menu option and footer on Defendant’s website in an attempt to reach the desired service.” (*Id.* at ¶ 47.) These allegations are inaccurate. The first navigation option presented on each page of Bonobos.com allows the user to skip directly to the page’s navigation pane, its contents or its “footer,” or to skip to the Bonobos.com “sitemap” (a text-based list of all pages accessible to users on Bonobos.com). The navigation function further allows users to skip to subcategories within each section on a page. This functionality allows users to quickly navigate the website using only a keyboard.

12. I note that this functionality is consistent with the WCAG 2.0 recommendation, which is not binding upon Bonobos, that sites contain mechanisms to bypass blocks of content that are repeated on multiple web pages. See WCAG 2.0 Recommendations.

13. Plaintiff also claims that “Bonobos.com requires the use of a mouse to complete a transaction” and that “Plaintiff was unable to move forward in his transaction because he did not specify collar type.” (Id. at ¶ 45.) This allegation is also inaccurate. All products on Bonobos.com can be browsed and selected using only the keys on a keyboard. Bonobos is not aware of any product page on Bonobos.com that requires the use of a mouse to complete a purchase.

14. This function is consistent with WCAG 2.0’s Operability Principle, which specifically recommends that functions be available from a keyboard. See WCAG 2.0 Recommendations.

15. Finally, Plaintiff alleges that he was “unable to find the location [of a “Bonobos’ Store”] on Defendant’s website, preventing him from going into the physical location to complete a reservation.” (Id. at ¶¶ 46, 48.) It is unclear what Plaintiff refers to by the terms “Bonobos store,” “the location” or “complete a reservation,” as Bonobos does not sell any of its products at a physical location. However, assuming Plaintiff is referring to Bonobos’ Guideshops – at which a Bonobos Guide can walk a customer through Bonobos’ entire collection and place an order for products on Bonobos.com on the customer’s behalf online – the location of each Guideshop is set forth in plain text on Bonobos.com, along with each Guideshop’s telephone number and operating hours, all of which is recognizable by most commercially available screen-reading software.

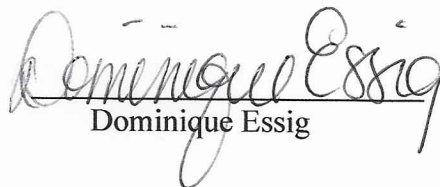
16. Bonobos also offers a toll-free national phone number, also listed in plain text on Bonobos.com, through which customers can ask questions to Bonobos' customer service employees, known as "Ninjas," including questions about navigating the website, finding a Guideshop and ordering products.

17. Although Plaintiff does not appear to make any allegations that content on Bonobos.com is not "understandable," as recommended by the WCAG 2.0 Understandability Principle, on information and belief, all text on Bonobos.com is recognizable by most commercially-available screen-reading software.

18. Similarly, although Plaintiff does not identify the kind of screen-reading software he is using, on information and belief, Bonobos.com can be interpreted reliably by "a wide variety of user agents, including assistive technologies," as is recommended by WCAG 2.0's fourth and final principle of "Robustness." See WCAG 2.0 Recommendations.

19. In sum, the goods and services of Bonobos are fully accessible to visually-impaired and blind customers and Bonobos.com already implements many of the recommendations contained in the WCAG 2.0 Recommendations, though these "guidelines" have no force of law.

**Pursuant to 28 U.S.C. Section 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on June 30, 2017.**

  
Dominique Essig

# EXHIBIT B

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Attorneys for Defendants

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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and all others similarly situated, :  
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Plaintiff, : Case No. 17-cv-2744(PAE)  
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-against- :  
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BONOBOS, INC., :  
 :  
Defendant. :  
-----X

**AFFIDAVIT OF DOMINIQUE ESSIG**  
**EXHIBIT B**

CD Containing Bonobos Video Simulation,  
served with hard copy of affidavit.

Bonobos has also made a copy of the video available for online review at:  
[https://drive.google.com/file/d/0B\\_1nW7OV-wPZd3NPYjUzRGJmZjA/view](https://drive.google.com/file/d/0B_1nW7OV-wPZd3NPYjUzRGJmZjA/view)  
(last accessed August 11, 2017)